

Appl. No. 09/826,583
Amdt. dated Oct 14, 2004
Reply to Office action of May 14, 2004

REMARKS

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Claims 1-8 are pending. Claims 9-43 have been canceled. The Examiner has rejected claims 1-25 and 32-43. Applicants respectfully request reconsideration of the application in view of the remarks made herein.

I. Information Disclosure Statement Cited Materials*Unger as PRIOR ART*

The Examiner has acknowledged that Unger et al is not PRIOR ART.

Quake as PRIOR ART

The Examiner has asked whether Applicants believe Quake et al. is PRIOR ART. Quake et al is NOT PRIOR ART under 35 U.S.C. §102 because it was not published more than one year prior to the filing date of this application, and because the two authors of Quake et al, Stephen R. Quake and Axel Scherer, are both co-inventors of the claimed invention, thereby the publication not being "before invention thereof by applicant for patent" under §102(a). The Examiner has now asked whether Quake is prior art under 35 U.S.C. §103. Applicants politely point out 1) that only references under §102 are available as art under §103, therefore, Quake cannot be used to form a prima facie case for obviousness under §103, and, 2) that the burden is upon the Examiner to demonstrate how Quake would render the claimed invention under §103 by making a prima facie showing of obviousness, including, but not limited to, a showing that each and every element of the claimed invention is disclosed or suggested by Quake.

Replacement IDS filings

Applicants shall promptly provide by U.S.P.S. mail service replacement IDS listings and non-patent references. Applicants believe they are currently in compliance with Rule 56 requirements for disclosure of known prior art.

II. Amendment to the Specification

Appl. No. 09/826,583
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Applicants have amended the specification per the Examiner's request.

III. Claim Amendment

Applicants have canceled all claims except claims 1-8 and reserve the right to pursue such canceled subject matter in a co-pending continuation application. Claim 1 has been amended, the amendment finding support throughout the specification, for example at page 14, lines 1-5, and page 17.

IV. Rejections Under 35 U.S.C. §102(b)

O'Keefe

The Examiner has rejected claims 1-25 and 32-43 under 35 U.S.C. §102(b) as being anticipated US Patent No. 3,495,608 by O'Keefe. Applicants respectfully traverse this rejection for the following reasons.

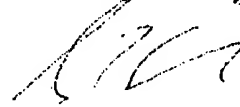
O'Keefe does not disclose each and every element of the claimed invention, among other things, and therefore cannot anticipate the claimed invention. For a reference to anticipate, it must disclose, among other things, each and every element of the claimed invention. O'Keefe doesn't disclose a first elastomeric layer and a second elastomeric layer, the first and the second elastomeric layers each having therein recesses having a depth dimension between 0.01 μm and 1000 μm , wherein a recess within the first elastomeric layer and a recess in the second elastomeric layer overlap with a membrane portion of one of the elastomeric layers being deflectable into one of the recesses of the elastomeric layers. The membrane of O'Keefe is made from a separate membrane sheet, not a layer having a recess that membrane can deflect into as claimed. Accordingly, Applicants respectfully request withdrawal of this rejection.

Appl. No. 09/826,583
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CONCLUSION

Applicants believe the claims are now in condition for allowance for the foregoing reasons. Accordingly, Applicants respectfully request a Notice of Allowance. If, in the Examiner's opinion, a telephone conference may be helpful, Applicants' counsel may be contacted at the number below.

Respectfully submitted
under 37 C.F.R. 1.34(a),



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